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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,915	09/12/2003	Kevin Damewood	SMCY-P01-103	7338
28120	7590	04/11/2006	EXAMINER	
FISH & NEAVE IP GROUP ROPES & GRAY LLP ONE INTERNATIONAL PLACE BOSTON, MA 02110-2624			SINGH, SUNIL	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/660,915	DAMEWOOD, KEVIN	
	Examiner	Art Unit	
	Sunil Singh	3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-20, 23, 24, 27-31 and 50-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-20, 23, 24, 27-31 and 50-59 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 53-55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 53 line 3, "the second mechanical drive unit" lacks clear antecedent basis.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3,5-11,16-17,23,24,27,50-52,53-55,58-59 are rejected under 35 U.S.C. 102(b) as being anticipated by Lewin (US 2649595).

Lewin discloses an adjustable mattress (see Figs. 4-7 and 13-14) comprising a first section and a second section, the first section and the second section moveable relative to each other and together forming at least a portion of a sleeping surface of the adjustable mattress; a first mechanical drive unit (see Figs.5 and 13) within the adjustable mattress, the first mechanical drive unit connected to at least one of the first section and the second section and providing a mechanical force to move the first

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section relative to the second section; and a flexible sheet (this is considered as the bottom of member (20)) disposed between the first mechanical drive unit and bottom surfaces of the first and second sections, said flexible sheet being continuous in a longitudinal direction of the mattress at least across one of the first and second sections. Second mechanical unit (see Figs. 5 and 6). Mattress cover (22,24). Padding (23). Foundation (26,26'). Spring core (see col. 3 line 5+). Controller (75). Arms (45). Base element (21) and platform (27,40). Frame (see col. 4 line 55+).

5. Claims 1,5-11,16-17,23-24,27,50-52,58,59 are rejected under 35 U.S.C. 102(b) as being anticipated by Neale (US 6129419)

Neale discloses an adjustable mattress ((14), see Figs. 6,7) comprising a first section and a second section, the first section and the second section moveable relative to each other and together forming at least a portion of a sleeping surface of the adjustable mattress; a first mechanical drive unit (38,60) within the adjustable mattress, the first mechanical drive unit (38,60) connected to at least one of the first section and the second section and providing a mechanical force to move the first section relative to the second section; and a flexible sheet (22) disposed between the first mechanical drive unit and bottom surfaces of the first and second sections, said flexible sheet being continuous in a longitudinal direction of the mattress at least across one of the first and second sections.

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6. Claims 1-3,5-11,16-17,23-24,27,50-52,53-55,57,58,59 are rejected under 35 U.S.C. 102(b) as being anticipated by Sekido et al. (US 4965899)

Sekido et al. discloses an adjustable mattress (see Figs. 23,24,61,62,63) comprising a first section and a second section, the first section and the second section moveable relative to each other and together forming at least a portion of a sleeping surface of the adjustable mattress; a first mechanical drive unit (E,b4,h3,h1) within the adjustable mattress, the first mechanical drive unit connected to at least one of the first section and the second section and providing a mechanical force to move the first section relative to the second section; and a flexible sheet (A,F) disposed between the first mechanical drive unit and bottom surfaces of the first and second sections, said flexible sheet being continuous in a longitudinal direction of the mattress at least across one of the first and second sections.

7. Claims 1,5-11,16-17,23-24,27,50-52,58,59 are rejected under 35 U.S.C. 102(b) as being anticipated by Meiller (US 4425910)

Meiller discloses an adjustable mattress (see Fig. 3) comprising a first section and a second section, the first section and the second section moveable relative to each other and together forming at least a portion of a sleeping surface of the adjustable mattress; a first mechanical drive unit (see Fig. 3) within the adjustable mattress, the first mechanical drive unit connected to at least one of the first section and the second section and providing a mechanical force to move the first section relative to the second section; and a flexible sheet (10) disposed between the first mechanical drive unit and

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bottom surfaces of the first and second sections, said flexible sheet being continuous in a longitudinal direction of the mattress at least across one of the first and second sections. Controller (see Fig. 11).

8. Claims 1,5-11,16-17,23-24,27,50-52,57,58,59 are rejected under 35

U.S.C. 102(b) as being anticipated by Kanigowski (US 5174526)

Kanigowski '526 discloses an adjustable mattress comprising a first section and a second section, the first section and the second section moveable relative to each other and together forming at least a portion of a sleeping surface of the adjustable mattress; a first mechanical drive unit (18) within the adjustable mattress, the first mechanical drive unit connected to at least one of the first section and the second section and providing a mechanical force to move the first section relative to the second section; and a flexible sheet (46) disposed between the first mechanical drive unit and bottom surfaces of the first and second sections, said flexible sheet being continuous in a longitudinal direction of the mattress at least across one of the first and second sections. Controller (10).

9. Claims 1,5-11,16-17,23-24,27,50-52,57,58,59 are rejected under 35

U.S.C. 102(b) as being anticipated by Kanigowski (US 5452868)

Kanigowski '868 discloses an adjustable mattress comprising a first section and a second section, the first section and the second section moveable relative to each other and together forming at least a portion of a sleeping surface of the adjustable mattress;

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a first mechanical drive unit (18) within the adjustable mattress, the first mechanical drive unit connected to at least one of the first section and the second section and providing a mechanical force to move the first section relative to the second section; and a flexible sheet (20) disposed between the first mechanical drive unit and bottom surfaces of the first and second sections, said flexible sheet being continuous in a longitudinal direction of the mattress at least across one of the first and second sections. Controller (10).

10. Claims 1,5-11,16-17,23-24,27,50-52,57,58,59 are rejected under 35 U.S.C. 102(b) as being anticipated by De Pascal et al. (US 5718476)

De Pascal et al. discloses an adjustable mattress (see Fig. 2) comprising a first section and a second section, the first section and the second section moveable relative to each other and together forming at least a portion of a sleeping surface of the adjustable mattress; a first mechanical drive unit (see Fig. 4) within the adjustable mattress, the first mechanical drive unit connected to at least one of the first section and the second section and providing a mechanical force to move the first section relative to the second section; and a flexible sheet (20) disposed between the first mechanical drive unit and bottom surfaces of the first and second sections, said flexible sheet being continuous in a longitudinal direction of the mattress at least across one of the first and second sections. Controller (50).

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11. Claims 1,5-11,16-17,23-24,27,50-52,57,58,59 are rejected under 35

U.S.C. 102(b) as being anticipated by Japanese document (60-45437)

Japanese document discloses an adjustable mattress (see Figs. 3,4) comprising a first section and a second section, the first section and the second section moveable relative to each other and together forming at least a portion of a sleeping surface of the adjustable mattress; a first mechanical drive unit (see Figs. 3,4) within the adjustable mattress, the first mechanical drive unit connected to at least one of the first section and the second section and providing a mechanical force to move the first section relative to the second section; and a flexible sheet (11,21) disposed between the first mechanical drive unit and bottom surfaces of the first and second sections, said flexible sheet being continuous in a longitudinal direction of the mattress at least across one of the first and second sections.

12. Claims 1,5-11,16-17,23-24,27,50-52,57,58,59 are rejected under 35

U.S.C. 102(b) as being anticipated by Japanese document (61-36029)

Japanese document '029 discloses an adjustable mattress (see Figs. 2,3,4) comprising a first section and a second section, the first section and the second section moveable relative to each other and together forming at least a portion of a sleeping surface of the adjustable mattress; a first mechanical drive unit (see Figs. 2,3,4) within the adjustable mattress, the first mechanical drive unit (14) connected to at least one of the first section and the second section and providing a mechanical force to move the first section relative to the second section; and a flexible sheet (12,23) disposed between the first



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mechanical drive unit and bottom surfaces of the first and second sections, said flexible sheet being continuous in a longitudinal direction of the mattress at least across one of the first and second sections.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewin.

With regards to claims 12-15, Lewin is silent about the controller being wireless and programmable. Controllers that are wireless and programmable are old and well known in the art. It would have been considered obvious to one of ordinary skill in the art to modify Lewin to include a wireless programmable controller since such an arrangement would reduce the number of cords needed to be used to actuate the mattress.

15. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meiller

With regards to claims 12-15, Meiller is silent about the controller being wireless and programmable. Controllers that are wireless and programmable are old and well known in the art. It would have been considered obvious to one of ordinary skill in the art to modify Meiller to include a wireless programmable controller since such an arrangement would aid a physically challenged person.

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16. Claims 18,19, 20, 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewin in view of Reeder et al. '209.

Lewin discloses the invention substantially as claimed. However, Lewin is silent about the first mechanical drive unit comprising a DC motor and worm gear. Reeder et al. discloses mechanical drive units comprising a DC motor and worm gear are conventional (see col. 14 lines 50+). It would have been considered obvious to one of ordinary skill in the art to modify Lewin by substituting the drive unit as taught by Reeder et al. as being well known and old in the art for the drive unit disclosed by Lewin since it is an obvious design choice to substitute equivalent parts for performing equivalent functions.

With regards to claim 31, it would have been considered obvious to one of ordinary skill in the art to modify Lewin to include a wireless controller since such an arrangement would reduce the number of cords needed to be used to actuate the mattress.

17. Claims 18,19, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meiller in view of Reeder et al. '209.

Meiller discloses the invention substantially as claimed. However, Meiller is silent about the first mechanical drive unit comprising a DC motor and worm gear and linkage arms. Reeder et al. discloses mechanical drive units comprising a DC motor, worm gear and linkage arms. Reeder et al. discloses mechanical drive units comprising a DC motor and worm gear and linkage arms are conventional (see col. 14 lines 50+). It would have been considered obvious to one of ordinary skill in the art to modify Meiller by

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substituting the drive unit as taught by Reeder et al. as being well known and old in the art for the drive unit disclosed by Meiller since it is an obvious design choice to substitute equivalent parts for performing equivalent functions.

18. Claims 18,19, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kanigowski '526 in view of Reeder et al. '209.

Kanigowski discloses the invention substantially as claimed. However, Kanigowski is silent about the first mechanical drive unit comprising a DC motor and worm gear and linkage arms. Reeder et al. discloses mechanical drive units comprising a DC motor and worm gear and linkage arms are conventional (see col. 14 lines 50+). It would have been considered obvious to one of ordinary skill in the art to modify Kanigowski by substituting the drive unit as taught by Reeder et al. as being well known and old in the art for the drive unit disclosed by Kanigowski since it is an obvious design choice to substitute equivalent parts for performing equivalent functions.

19. Claims 18,19, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kanigowski '868 in view of Reeder et al. '209.

Kanigowski '868 discloses the invention substantially as claimed. However, Kanigowski is silent about the first mechanical drive unit comprising a DC motor and worm gear and linkage arms. Reeder et al. discloses mechanical drive units comprising a DC motor and worm gear and linkage arms are conventional (see col. 14 lines 50+). It would have been considered obvious to one of ordinary skill in the art to modify Kanigowski by

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substituting the drive unit as taught by Reeder et al. as being well known and old in the art for the drive unit disclosed by Kanigowski since it is an obvious design choice to substitute equivalent parts for performing equivalent functions.

20. Claims 18,19, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Pascal et al. in view of Reeder et al. '209.

De Pascal et al. discloses the invention substantially as claimed. However, De Pascal et al. is silent about the first mechanical drive unit comprising a DC motor and worm gear and linkage arms. Reeder et al. discloses mechanical drive units comprising a DC motor and worm gear and linkage arms are conventional (see col. 14 lines 50+). It would have been considered obvious to one of ordinary skill in the art to modify De Pascal et al. by substituting the drive unit as taught by Reeder et al. as being well known and old in the art for the drive unit disclosed by De Pascal et al. since it is an obvious design choice to substitute equivalent parts for performing equivalent functions.

21. Claims 18,19, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese document '437 in view of Reeder et al. '209.

Japanese document '437 discloses the invention substantially as claimed. However, Japanese document '437 is silent about the first mechanical drive unit comprising a DC motor and worm gear and linkage arms. Reeder et al. discloses mechanical drive units comprising a DC motor and worm gear and linkage arms are conventional (see col. 14 lines 50+). It would have been considered obvious to one of ordinary skill in the art to

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modify Japanese document '437 by substituting the drive unit as taught by Reeder et al. as being well known and old in the art for the drive unit disclosed by Japanese document '437 since it is an obvious design choice to substitute equivalent parts for performing equivalent functions.

22. Claims 56-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewin.

With regards to claims 56-57, Lewin is silent about the flexible sheet being made out of plywood or plastic. Flexible support made out of plywood or plastic is old and well known in the art. It would have been considered obvious to one of ordinary skill in the art to modify Lewin to include either a plywood or plastic flexible sheet since such an arrangement would provide some rigidity for support as well as afford some flexibility to facilitate the raising of the head and/or foot portion of the mattress.

### ***Response to Arguments***

23. Applicant's arguments with respect to claims 1, 27 and 28 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

24. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Engle Patricia can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sunil Singh

Primary Examiner  
Art Unit 3673**SUNIL SINGH**  
**PRIMARY PATENT EXAMINER***Sunil Singh*

4/6/06